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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOSEPH SOHM,	:	
	:	
Plaintiff,	:	Case No: 16 Civ. 07098 (JPO)
	:	
v.	:	<b>DEFENDANT'S ANSWER TO</b>
	:	<b>PLAINTIFF'S COMPLAINT</b>
SCHOLASTIC, INC.,	:	
	:	
Defendant.	:	
	:	
-----	X	

Defendant Scholastic Inc. ("Scholastic"), by and through its attorneys, Frankfurt Kurnit Klein & Selz, P.C., as and for its Answer ("Answer") and affirmative defenses to the Complaint ("Complaint") filed by Plaintiff Joseph Sohm ("Sohm") states as follows:

### STATEMENT OF ACTION

1. In response to the allegations in Paragraph 1 of the Complaint, Scholastic admits that this is an action for copyright infringement, but denies that Plaintiff has alleged any other causes of action. Scholastic denies sufficient knowledge or information to form a belief as to the truth of the remaining allegations, and denies that Scholastic has made unauthorized uses of Plaintiffs' photographs.

## **PARTIES**

2. Scholastic denies sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Complaint.

3. In response to the allegations set forth in Paragraph 3 of the Complaint, Scholastic admits that it is a New York corporation with its principal place of business at 557 Broadway, New York, New York 10012 and that it is the world's largest publisher and distributor of children's books, but denies that it unlawfully reproduced Plaintiffs' photographs.

## **JURISDICTION**

4. The allegations set forth in Paragraph 4 of the Complaint contain legal conclusions to which no response is required.

## **VENUE**

5. The allegations set forth in Paragraph 5 of the Complaint contain legal conclusions to which no response is required.

## **FACTS COMMON TO ALL COUNTS**

6. Scholastic denies sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Complaint.

7. Scholastic denies sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Complaint.

8. Scholastic denies sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Complaint.

9. Scholastic denies sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Complaint, except to admit that Scholastic has licensed certain of Plaintiffs' photographs and refer the Court to any licenses Scholastic may

have obtained to use Plaintiff's photographs for proof of their contents.

10. Scholastic denies the allegations set forth in Paragraph 10 of the Complaint.

11. Scholastic denies the allegations set forth in Paragraph 11 of the Complaint.

12. Scholastic denies the allegations set forth in Paragraph 12 of the Complaint.

13. Scholastic denies the allegations set forth in Paragraph 13 of the Complaint, and refers the Court to the records in the litigation cited therein for proof of the contents thereof.

14. The allegations set forth in Paragraph 14 of the Complaint contain legal conclusions to which no response is required.

### **COUNT I**

#### **COPYRIGHT INFRINGEMENT AGAINST SCHOLASTIC**

15. Scholastic repeats and realleges its responses to the allegations set forth in Paragraphs 1 through 14 as if fully set forth herein.

16. Scholastic denies the allegations set forth in Paragraph 16 of the Complaint.

17. Scholastic denies the allegations set forth in Paragraph 17 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

As and for its affirmative defenses, Scholastic alleges as follows, without assuming any burden of pleading or proof that would otherwise rest with Plaintiff, and without waiving and hereby expressly reserving the right to assert any and all additional affirmative defenses at such time and to such extent as discovery and factual developments establish a basis therefore:

##### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a claim upon which relief may be granted.

##### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred, in whole or in part, by the applicable three year statute of limitations for a claim of copyright infringement (17 U.S.C. § 507(b)) and/or the three year

limitation on damages pursuant to *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1662, 1669 (2014).

### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred, in whole or in part, because Scholastic had a license to use the images and it did not exceed the scope of the license.

### **FOURTH AFFIRMATIVE DEFENSE**

To the extent Scholastic has breached the terms of any license agreement, Plaintiff's claims arise under contract law, not copyright law. Moreover, any such claims may be barred by applicable statute of limitations for contract claims.

### **FIFTH AFFIRMATIVE DEFENSE**

To the extent that Plaintiff's claim relates to Scholastic's re-use of a photograph in a later edition, revised edition, or an electronic version of a work for which Scholastic had previously licensed a photograph, such re-use is non-infringing pursuant to the revision privilege contained in Section 201(c) of the Copyright Act.

### **SIXTH AFFIRMATIVE DEFENSE**

Upon information and belief, to the extent any copyright registrations are asserted by Plaintiff as covering the photographs at issue, Scholastic alleges that some or all of such copyrights may be invalid and/or unenforceable.

### **SEVENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff has not obtained a valid copyright registration for some or all of the images that are the subject of this lawsuit, Plaintiff lacks standing to bring this suit.

### **EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred, in whole or in part, because Scholastic did not willfully

infringe any intellectual property or other rights owned by Plaintiff. Scholastic has acted in good faith without any intention of injuring Plaintiff.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff have sustained no injury or damage as a result of any act or conduct of Scholastic.

**TENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff is attempting to use this action to audit Scholastic's uses of their photographs, Plaintiff lacks any right to an audit under the Copyright Act, 17 U.S.C. § 106 or otherwise.

**PRAAYER FOR RELIEF**

WHEREFORE, Scholastic requests a judgment dismissing Plaintiff's Complaint, along with an award of costs, disbursements and reasonable attorneys' fees, in addition to other such relief as this Court deems just and proper.

Dated: New York, New York  
October 14, 2016

FRANKFURT KURNIT KLEIN & SELZ, P.C.

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